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IN THE
Supreme Court of the United States

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No. [redacted]Original.
In Equity.

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff,

v.

STATE OF NEW YORK, et al.,
Defendants.

BRIEF FOR THE DEFENDANTS JOHN ALBERT GRANGER, EMMA R. GRANGER AND GIDEON GRANGER, IN SUPPORT OF THEIR MOTION TO DISMISS THE BILL.

HARRY C. MILLER,
Solicitor for defendants John Albert Granger, Emma R. Granger and Gideon Granger,
8 Rector Street,
New York, N. Y.

INDEX.

Authorities Cited.

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Statement.

On May 12, 1922 the Commonwealth of Massachusetts filed an original bill in equity in this court. On February 26, 1923, upon motion of the plaintiff, the bill was amended by substituting John Albert Granger, Emma R. Granger (his wife), and Gideon Granger as parties defendant,

in the place of the defendant, Anna T. Granger, the mother of the said John Albert Granger and Gideon Granger, who died prior to the filing of the bill.

Motion to Dismiss the Bill.

The said defendants, John Albert Granger, Emma R. Granger and Gideon Granger now move to dismiss the bill, upon the grounds:

(1) That the bill does not present for determination a case or controversy within the original jurisdiction of this Court;

(2) That the bill does not state facts sufficient to constitute a valid cause of action in equity;

(3) That it appears upon the face of the bill that the plaintiff has an adequate remedy at law;

(4) That it appears upon the face of the bill that the right and title of sovereignty, government and jurisdiction over the lands described in the bill are in the State of New York and not in the plaintiff; that said lands have been taken for public use under the power of eminent domain and the laws of the State of New York and are now in the possession of the City of Rochester, a municipal corporation and a political subdivision of the State of New York, under and by virtue of an order of the Supreme Court of the State of New York; that the Supreme Court of the State of New York is now proceeding judicially to determine the ownership and value of said lands and to award just compensation therefor to the true owners; and that the judgment of said Supreme Court of the State of New York has not yet been rendered.

The Bill of Complaint.

The action is brought by the Commonwealth of Massachusetts against the State of New York, the City of Rochester, the Clerk of Monroe County, New York, the three Commissioners of Appraisal appointed by the Supreme Court of the State of New York in a proceeding to condemn the land described in the bill, for public use, and several corporate and individual defendants.

The bill alleges in substance (p. 7 *et seq.*) that certain grants of land in America were made in the 17th century by British sovereigns to the Duke of York and Albany, the Council of Plymouth and the Province of Massachusetts Bay; that these grants extended westerly indefinitely, and in the western part of New York overlapped, so that when the Commonwealth of Massachusetts succeeded to the title, sovereignty and jurisdiction of the lands formerly of the Massachusetts Bay and Plymouth Colonies, and the State of New York succeeded to the title, sovereignty and jurisdiction of the lands granted to the Duke of York and Albany, a dispute arose between the two states over a large part of the land now forming the State of New York; that on account of the collision of description of the above mentioned grants, the Commonwealth of Massachusetts and the State of New York laid claim to the jurisdiction, sovereignty and pre-emptive right over the same land; that on December 16, 1786, the Commonwealth of Massachusetts and the State of New York settled their differences by executing the Hartford Treaty, by the terms of which the State of New York ceded, granted, released and

confirmed to the Commonwealth of Massachusetts the right of pre-emption of the soil from the native Indians, and all other the estate, right, title and property (*the right and title of government, sovereignty and jurisdiction excepted*), which the State of New York had in and to a large tract of land within the boundaries of the State of New York; that said Hartford Treaty provided *that no adverse possession of said lands for any length of time shall be adjudged a disseisin of the Commonwealth of Massachusetts;* that included in the lands so ceded by the State of New York to the Commonwealth of Massachusetts by the Hartford Treaty, were certain lands situated in the City of Rochester, County of Monroe and State of New York (described in the bill at p. 10) which are the subject of this action; and that the Commonwealth of Massachusetts has never divested itself of its title to said lands.

The bill further sets forth (p. 11 *et seq.*) the provisions of the Charter of the City of Rochester, granted by the State of New York, authorizing said City to acquire lands for public use by condemnation proceedings, under the power of eminent domain, and establishing the procedure in the Courts of New York for ascertaining the value of the lands so taken and for ascertaining and paying the compensation which ought justly to be made by the city to the owners of such lands and to persons having any estate, interest or easement therein or any lien, charge or encumbrance thereon, and the procedure by which said city is authorized to take and retain possession of such lands pending such proceedings.

The bill further alleges (p. 15 *et seq.*) that on April 13, 1920, in accordance with the provisions of said Charter and said Laws of the State of

New York, the City of Rochester instituted condemnation proceedings in the New York Supreme Court to acquire the parcel of land described in the bill, which constitutes the subject of this action, for public use; that the Commissioners of Appraisal, who are made defendants in this action, were duly appointed by the Supreme Court of the State of New York in said proceeding, pursuant to said Charter and Laws, with power and authority to ascertain and report the amount of compensation which the owners, tenants or occupants of said land and the rights and easements therein will be entitled to receive for the same; that the said Commissioners of Appraisal are now engaged in hearing proofs and are about to file their report as provided by said Charter; that the Commonwealth of Massachusetts has notified said Commissioners that they are without power to adjudicate the interests of the Commonwealth of Massachusetts in and to the said parcel of land; that said Commissioners are about to appraise the damage and compensation which the owners, tenants or occupants of said parcel of land shall severally be entitled to receive therefor, and are about to report that the same should be paid to parties other than the rightful owner of said parcel of land, to wit: the Commonwealth of Massachusetts.

The bill further alleges (p. 15 *et seq.*) that all of said proceedings were taken in accordance with the Laws of the State of New York. It does not allege any irregularity in said condemnation proceedings, but alleges (p. 6) that the Commonwealth of Massachusetts has appeared specially in said proceedings, apparently for the sole purpose of objecting to the jurisdiction of the Su-

preme Court of the State of New York to adjudicate the rights of the Commonwealth of Massachusetts in said parcel of land.

The bill further alleges (p. 19 *et seq.*) that various deeds have heretofore been executed, delivered and recorded, purporting to convey the premises described in the bill to certain individual and corporate defendants or their grantors or predecessors in title. The earliest of these deeds is alleged to have been executed and delivered by one William Sheldon, as Sheriff of Genesee County, to one Gideon Granger (the ancestor and predecessor in title of these moving defendants) on January 14, 1817 (p. 21). The bill alleges, with respect to each of the deeds so executed, delivered and recorded, that, being not void on its face, it creates an apparent defect in, and is a cloud upon, the title of the plaintiff, the Commonwealth of Massachusetts, and tends to make the said real property unmarketable.

So far as the allegations of the bill are concerned, each of the persons alleged to have executed deeds constituting clouds upon the title to said land appears to have been a stranger to the title.

The bill further alleges (p. 29) that the various proceedings taken in the New York Supreme Court, to condemn said land for public use, create an apparent defect in and constitute a cloud upon the title of the plaintiff.

In the prayer of the bill (p. 32) the plaintiff asks:

1. That a Writ of Injunction be issued by this Court restraining and enjoining all of the defendants herein from taking any further proceedings in the action brought to condemn said land in the

Supreme Court of the State of New York and from doing any other acts which may constitute or create a cloud upon the title of the plaintiff to said land pending this suit;

2. That on final hearing, such Writ of Injunction be made permanent;

3. That the alleged claims, titles, liens, encumbrances and interests, set forth and referred to in the bill, so far as they affect or refer to said parcel of land, or any part thereof, may be adjudged invalid and void and that it be adjudged that none of the defendants has any interest or estate in said property or any part thereof; that the plaintiff's title to said property be adjudicated and established and that it be adjudged and decreed that the plaintiff is the owner thereof in fee and that the defendants and each of them be forever barred from asserting or claiming any interest or estate therein;

4. In the alternative, that on final hearing the plaintiff's right to receive adequate compensation from the City of Rochester and the amount thereof, be adjudicated and established; and

5. That the plaintiff be granted other and further relief.

ARGUMENT.

POINT I.

The State of New York has the power of eminent domain over the lands described in the bill.

The bill alleges that the lands therein described lie within the boundaries of the State of New York and that the right and title of government, sovereignty and jurisdiction thereof, once claimed by Massachusetts, were expressly reserved to New York by the *Treaty of Hartford* (Mass. Perpetual Laws, 1789, p. 392; N. Y. State Senate Documents, 1873, Vol. 5, p. 216), entered into between New York and Massachusetts, prior to the adoption of the Constitution of the United States. By that treaty, the right and title of government, sovereignty and jurisdiction over the lands in question were not only reserved to New York, but were expressly ceded and granted to New York by Massachusetts, in the following language:

> "*First.* The Commonwealth of *Massachusetts* doth hereby cede, grant, release and confirm to the State of *New York* forever, all the claim, right and title which the Commonwealth of *Massachusetts* hath to the government, sovereignty, and jurisdiction of the lands and territories so claimed by the State of *New York* * * *."
>
> *Hartford Treaty, supra.*

This court will take judicial notice of all of the terms of that treaty even though they are not set forth in the bill.

> *Coffee* v. *Groover*, 123 U. S. 1, 11, *et seq.*; *Jones* v. *United States*, 137 U. S. 202, 214.

In *Rhode Island* v. *Massachusetts,* 12 Peters, 657, 727, this court held that

> "If there is a compact between the States, it settles the line of original right; it is the law of the case binding on the States and its citizens, as fully as if it had been never contested."

As the lands in question are within the territorial limits of the State of New York and as the State of New York has the right and title of government, sovereignty and jurisdiction thereover, it has the power to take said lands for public use by eminent domain.

Eminent domain is the sovereign right or power to resume possession of land within the State, for public use.

> *Beekman* v. *Saratoga etc. Co.,* 3 Paige (N. Y.) 45, 73.

It is an "incident to sovereignty," a power "which belongs to every independent government."

> *Cincinnati* v. *Louisville & Nash. R.R. Co.,* 223 U. S. 390, 404.

A state cannot divest itself of so vital a governmental power as the power of eminent domain over land within its borders.

> *Penn. Hospital* v. *Philadelphia,* 245 U. S., 20.

Land owned by one state, within another state, is held by the owner subject to all of the incidents of private ownership, including eminent domain.

Burbank v. *Fay*, 65 N. Y., 57;
Smith v. *City of Rochester*, 92 N. Y., 463, 477.

Having divested itself of the right and title of government, sovereignty and jurisdiction over the land described in the bill, the Commonwealth of Massachusetts is merely a private proprietor thereof. All private rights within the territorial limits of a state, are subordinate to the power of eminent domain.

Cincinnati v. *Louisville & Nash. R.R. Co.*, *supra.*
West River Bridge Co. v. *Dix*, 6 How., 507.

Lands owned by one sovereign within the jurisdiction and territorial limits of another sovereign may be taken by the latter by eminent domain.

United States v. *Railroad Bridge Co.*, 27 Fed. Cas. #16114 (6 McLean 517);
Union Pacific R. Co. v. *Leavenworth etc. Co.*, 29 Fed. 728;
Northern Pacific R. R. Co. v. *St. Paul*, 3 Fed. 702;
Union Pacific R. Co. v. *Burlington etc. Co.*, 3 Fed. 106.

In *Wadsworth* v. *Buffalo Hydraulic Association,* 15 Barb. (N. Y.) 83, the court, referring to the rights of Massachusetts and New York under the *Treaty of Hartford,* said at page 95:

> "It seems to me that the right granted to Massachusetts in 1786, to purchase the lands of the Indians, was, and always has been, subject to the right of the state to take and appropriate for public use, the lands to which the right of purchase attached; otherwise a portion of the territory of the state would be beyond its 'right of sovereignty.'"

The laws of the State of New York are applicable to all of the lands within its borders.

Harrison v. *Fite,* 148 Fed. 781.

By entering into the *Treaty of Hartford,* the Commonwealth of Massachusetts will be assumed to have consented that the land described in the bill should be governed and dealt with "according to the law of the state in which the land lies."

Oklahoma v. *Texas,* 42 Sup. Ct. Rep. 406, 414.

POINT II.

The Supreme Court of New York has jurisdiction of the condemnation proceedings pending therein.

"Jurisdiction" over the lands described in the bill was expressly reserved and ceded to the State of New York by the *Treaty of Hartford.*

The courts of every sovereign state have jurisdiction of proceedings to acquire lands within

that state for public use, under the power of eminent domain.

The bill sets forth many of the statutes of the State of New York relating to the jurisdiction of the Supreme Court of that state to hear and determine proceedings in condemnation. This Court will take judicial notice of all other laws of the State of New York relating to such jurisdiction.

> "When exercising an original jurisdiction under the Constitution and Laws of the United States, this court, as well as every other court of the National Government, doubtless takes notice, without proof, of the laws of each of the United States."
>
> *Hanley* v. *Donoghue*, 116 U. S. 1, 6.

See also:

Owings v. *Hull*, 9 Peters 607;
Lamar v. *Micou*, 112 U. S. 452.

The plaintiff does not contend that the Supreme Court of New York is without jurisdiction of the subject matter of the condemnation proceedings but denies the jurisdiction of that court over the Commonwealth of Massachusetts.

As the condemnation proceedings are *in rem,* the court has complete jurisdiction of the cause, regardless of who may own or claim an interest in the lands. Its jurisdiction cannot be defeated by reason of the fact that one claimant is a sovereign state, over which the court has no control, nor by the refusal of such state to submit to the jurisdiction of the court.

Nor can the refusal of the Commonwealth of Massachusetts to submit to the jurisdiction of the Supreme Court of New York, prevent that court from determining the value of any interest that

the Commonwealth of Massachusetts may have in the lands taken for public use and awarding compensation therefor.

> "When a court has jurisdiction, it has a right to decide every question which occurs in the cause."
>
> *Buffalo & S. L. R. Co.* v. *Supervisors of Erie County,* 48 N. Y., 93, 98.

POINT III.

This Court will not enjoin the condemnation proceedings pending in the Supreme Court of the State of New York.

The principal relief prayed for by the plaintiff is a Writ of Injunction restraining "all of said defendants taking any further proceedings in said condemnation-proceedings" pending in the Supreme Court of the State of New York.

The Judicial Code, Section 265, provides as follows:

> "The Writ of Injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

The prohibition of that Section of the Judicial Code applies to this Court as well as to the inferior courts of the United States.

> *Slaughter-House Cases,* 10 Wall. 273, 298.

Irrespective of the Judicial Code, no Federal Court will enjoin the prosecution of an action *in rem* pending in a State Court, of which the latter has jurisdiction.

> *Essanay Film Mfg. Co.* v. *Kane* (U. S. Sup. Ct., Oct. Term, 1921), Adv. Op. 1921-1922, #13 p. 395;
> *Farmers' Loan & Trust Co.* v. *Lake Street R. Co.*, 177 U. S. 51;
> *Kline* v. *Burke Construction Co.* (U. S. Sup. Co. Oct. Term, 1922), Adv. Op. 1922-1923, #4 p. 91.

This is especially true where the State Court has actually seized the *res*, under judicial process, as in the case at bar. The bill alleges (p. 17):

> "That on the 26th day of April, 1920, the said Supreme Court (of New York) entered an order authorizing the said City of Rochester to take immediate possession of the real estate, rights and easements sought to be taken (in the condemnation proceedings), and that the City of Rochester thereafter took possession of the real estate, rights and easements in the said lands hereinbefore described."

In *Essanay Film Mfg. Co.* v. *Kane, supra,* this Court said at page 397:

> "Since 1793, the prohibition of the use of injunction from a Federal Court to stay proceedings in a State Court has been maintained continuously and has been consistently upheld."

The bill alleges upon information and belief (p. 18) that the Commissioners of Appraisal

> "are about to appraise the damage and compensation which the owners, tenants or oc-

cupants of the lands and buildings taken have sustained by being deprived thereof and the amount of compensation which they shall severally receive therefor, and are about to report that the same should be paid to parties other than the rightful owner of the land, to wit: your plaintiff."

That allegation is not sufficient to warrant the granting of a Writ of Injunction to restrain further proceedings in the New York Supreme Court, because this Court will assume that the New York Court, its Commissioners of Appraisal, and the City of Rochester, will proceed legally under the power of eminent domain.

> *Galveston Wharf Co.* v. *Galveston* (U. S. Sup. Ct. Oct. Term 1922),
> Adv. Op. 1922-1923, #7, p. 210.

The determination of the question as to who is entitled to a right of preemption of the soil is a judicial function and will not be restrained.

> *Litchfield* v. *Richards*, 9 Wall. 575.

POINT IV.

The Commonwealth of Massachusetts, not being in possession of the lands described in the bill, cannot sue to remove a cloud from its alleged title.

An owner of real estate, in possession of another, cannot maintain a bill in equity to remove a cloud from the title.

> *Frost* v. *Spitley*, 121 U. S. 552;
> *Dick* v. *Foraker*, 155 U. S. 404, 414

In *Frost* v. *Spitley supra*, this court said at page 556:

> "A person out of possession cannot maintain such a bill, whether his title is legal or equitable; for if his title is legal, his remedy at law, by action of ejectment, is plain, adequate and complete; and if his title is equitable, he must acquire the legal title, and then bring ejectment."

That rule has been uniformly followed by this court except as to lands in states where the rule has been changed by statute, permitting an owner, out of possession, to maintain an action to remove a cloud from the title.

> *United States* v. *Wilson*, 118 U. S. 86;
> *Fussell* v. *Gregg*, 113 U. S. 550.

There is no such statute in New York, but on the contrary the New York statutes require, not only that the lands shall be in the possession of the plaintiff at the time of the commencement of such action, but that they shall have been in his possession for at least one year prior to the commencement of the action.

Real Property Law (N. Y.) Section 500 provides as follows:

> "Where a person has been or he and those whose estates he has, have been for one year in possession of real property, or of any undivided interest therein, claiming it in fee, or for life, or for a term of years not less than ten, he may maintain an action against any other person to compel the determination of any claim adverse to that of the plaintiff which the defendant makes, or which it appears from the public records, or from the allegations of the complaint, the defendant

might make to any estate in that property in fee, or for life, or for a term of years not less than ten, in possession, reversion or remainder, or to any interest in that property, including any claim in the nature of an easement therein, whether appurtenant to any other estate or lands or not, and also including any lien or incumbrance upon said property, of the amount or value of not less than two hundred and fifty dollars. But this section does not apply to a claim for a dower.

Section 501 of the same law provides that:

"The complaint in such an action must set forth facts showing: * * *

"That the property, at the commencement of the action was, and, for the one year next preceding, has been in his possession, or in the possession of himself and those from whom he derives his title, either as sole tenant, or as joint tenant, or as tenant in common with others."

The bill alleges (p. 17) that the City of Rochester has taken possession of the lands therein described, under an order of the New York Supreme Court in the condemnation proceedings and therefore it appears upon the face of the bill that the Commonwealth of Massachusetts has no cause of action for removing any cloud from its alleged title or for the determination of its alleged claim to the lands described in the bill.

POINT V.

The bill does not allege facts sufficient to show any cloud upon the alleged title of the Commonwealth of Massachusetts.

It appears upon the face of the bill (p. 19 *et seq.*) that all of the deeds and other instruments alleged to constitute clouds upon the title of the plaintiff, were made, executed, delivered and recorded by strangers to the title. Each of said instruments is therefore void upon its face and constitutes no cloud upon the title.

If a deed is void on its face, the interference of a court of equity is unnecessary.

> *Hannewinkle* v. *Georgetown*, 82 U. S. 547;
> *Mackall* v. *Casilear*, 137 U. S. 556, 564;
> *Rich* v. *Braxton*, 158 U. S. 375;
> *Townsend* v. *New York*, 77 N. Y. 542.

A deed executed and recorded by a stranger to the title, is void upon its face and does not constitute a cloud upon the title of the real estate described therein.

> *Ward* v. *Dewey*, 16 N. Y. 519;
> *Welden* v. *Stickney*, 1 App. D. C. 343;
> *Thompson* v. *Etowah Iron Co.*, 91 Ga. 538;
> *Pixley* v. *Huggins*, 15 Cal. 127.

The grantee named in a deed given by a stranger to the title can never acquire any title thereunder, to the lands described in the bill, as against the Commonwealth of Massachusetts, for the reason:

"That the terms of the Treaty (of Hartford) provided, in the seventh clause thereof, that no adverse possession of the said lands for any length of time shall be adjudged a disseizin of the Commonwealth of Massachusetts."

Bill, p. 9; *Hartford Treaty,* 7th Clause.

For that reason, the case at bar is distinguishable from the case of *Graves* v. *Ashburn,* 215 U. S. 331, wherein it was held that the plaintiff was entitled to maintain a bill in equity against one claiming lands under a deed executed by a stranger to the title, where, under a statute of the State of Georgia, in which such lands were located, possession thereof by the grantee for seven years would vest the title in him.

POINT VI.

The plaintiff has an adequate remedy at law.

It appears from the allegations of the bill that an action is pending in the Supreme Court of the State of New York wherein the Commonwealth of Massachusetts can fairly present its title and obtain an adjudication thereof, if it wishes to submit to the jurisdiction of that court, and no special reason is shown for interference of a court of equity.

Where a party has a complete defense to an action at law, he cannot maintain a bill to enforce his rights without showing some special reason for the interference of a court of equity.

Huntington v. *Allen,* 44 Miss. 654;
Chamberlain v. *Marshall,* 8 Fed. 398;
Moran v. *Palmer,* 13 Mich. 367.

The Commonwealth of Massachusetts has only a legal right to recover just compensation for the land taken and this court will not enjoin the condemnation proceedings, for the reason that the plaintiff has an adequate remedy at law.

> *D. M. Osborne & Co.* v. *Mo. Pacific R. R. Co.*, 147 U. S. 248.

A bill in equity to enjoin an action in another court, cannot be maintained where it appears from the bill that the complainant has a perfect legal defense to such action.

> *Deweese* v. *Reinhard,* 165 U. S. 386.

> "There can be no reason or propriety in appealing to a court of equity to restrain proceedings that are being conducted in other courts, competent to construe the statutes under which they act, and to decide every question that may arise in the course of the proceeding."

> *Wilson* v. *Lambert,* 168 U. S. 611, 618.

After praying for an injunction to restrain the condemnation proceedings and for judgment removing the alleged clouds from the title, the plaintiff prays (p. 33):

> "In the Alternative, that on final hearing the plaintiff's right to receive adequate compensation from the defendant City of Rochester, and the amount thereof, be adjudicated and established."

The New York Supreme Court, which has already taken jurisdiction of the subject of the action, and has seized the *res,* has adequate and

complete jurisdiction and power to determine the validity of the claim of the Commonwealth of Massachusetts and to award adequate compensation for the land taken. If the allegations of the bill are true, the Commonwealth has an adequate and complete remedy at law, in the New York Supreme Court, where the condemnation proceedings are pending and there is no reason shown for the interference of a court of equity.

Article 1, Section 6 of the Constitution of the State of New York provides, "Nor shall private property be taken for public use without just compensation."

This court will not assume that the New York Supreme Court will act contrary to the Constitution of that State.

POINT VII.

This Court has not jurisdiction of the subject of the action.

> "Notwithstanding the comprehensive words of the Constitution, the mere fact that a state is the plaintiff is not a conclusive test that the controversy is one in which this court is authorized to grant relief against another state or her citizens."
>
> *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 287.

In *Kline* v. *Burke Instruction Co.*, *supra* (p. 92), this Court said that in actions *in rem*

> "where the jurisdiction of the State Court has first attached, the Federal Court is precluded from exercising its jurisdiction over the same *res* to defeat or impair the State Court's jurisdiction."

The subject matter of the bill in the case at bar involves the sovereignty and jurisdiction of the State of New York and the right of that state to exercise the power of eminent domain over lands within its borders. It is a political controversy, of which this Court will not entertain jurisdiction.

> *State of Rhode Island* v. *State of Mass.*, 12 Peters, 657;
> *State of Georgia* v. *Stanton*, 6 Wall., 50;
> *Cherokee Nation* v. *Georgia*, 5 Peters, 1.

In *Cherokee Nation* v. *Georgia, supra*, a bill was filed in this court, in behalf of the Indians, for an injunction to prevent the execution of certain acts of the legislature of Georgia, within the territory of the Cherokee Nation (in the State of Georgia). The acts of the legislature, if permitted to be carried into execution, would have subjected the Cherokee Nation to the jurisdiction of the State. The injunction was denied on the ground that the plaintiff could not be regarded as a foreign nation, and therefore had no right to file the bill. But Chief Justice Marshall, who delivered the opinion of the Court, strongly intimated that this Court was without jurisdiction on the further ground that the question presented was political. He said at page 20:

> "The bill requires us to control the legislature of Georgia, and to restrain the exertion of its physical force. The propriety of such an interposition by the court may be well questioned. It savors too much of the exercise of political power to be within the proper province of the judicial department."

The case at bar is not a boundary dispute. The complainant admits that the land claimed by it is within the territorial jurisdiction of the State of New York. The bill, therefore, presents the political question of whether the State of New York shall exercise the power of eminent domain over land within that State, the proprietary ownership of which is claimed by a sister State. This Court is without jurisdiction to decide that question.

POINT VIII.

The bill should be dismissed.

Where a bill of complaint filed by a sovereign state does not state facts sufficient to constitute a cause of action within the original jurisdiction of this Court, the bill will be dismissed on motion.

> *Texas* v. *Interstate Commerce Commission*, (U. S. Sup. Ct. Oct. Term, 1921) Adv. Op., 66 L. Ed. 310;
> *N. Dak. ex rel. Lemke* v. *Chicago & N. W. R. Co.* (Sup. Ct. Oct. Term 1921) Advance Op. 66 L. Ed. 199;
> *State of Ga.* v. *Stanton, supra;*
> *State of Rhode Island* v. *State of Mass., supra,* p. 669.

Respectfully submitted,

Harry C. Miller,
Solicitor for defendants John Albert Granger, Emma R. Granger and and Gideon Granger.